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LEGAL ANALYSIS OF TRUST IN THE ADMINISTRATION OF COMMUNAL LAND IN NIGERIA

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Abstract

Communal ownership of land is one of the fundamental principles of customary land law in Nigeria. Under customary law, the communal land is held and managed by the head on behalf of the members, and no member has right to alienate a part of the land without the consent of the head. Unfortunately, the problem of insecurity of customary land title has become perennial despite the enactment of the Land Use Act, 1978.This article therefore, analysed the application of trust in the administration of customary land in Nigeria, and also utilised the doctrinal research methodology to address the challenges posed by insecurity of communal land ownership. The article found that it is rarely difficult for the community to alienate a part of the communal land which belongs to entire members of the community. More so, the rule that alienation of land by community head is subject to the concurrence of principal members has caused untold hardship and injustice to innocent purchasers of community land even though the rule is no longer suitable and effective to guarantee security to title to land. Thus, it is recommended that the rule governing alienation of communal land should be jettisoned, and trustee(s) of the village or community be appointed or constituted in accordance with the provisions of Companies and Allied Matters Act to administer the communal property with power to alienate the communal land or portion of it on behalf of the community.

Keywords: Trust, communal land, customary law, village head, trustee

1. Introduction

The importance of land to socio-economic development of any society cannot be over-emphasized. Government requires land for infrastructural development and provision of social amenities to the citizenry as the individuals also depend on land for sustenance, farming and shelter. Ownership of land provides capital, economic strength, liberty, and freedom, and the lack of it connotes the absence of these attributes of land.[1] Therefore, any government that has unlimited access to land can pursue socio-economic developments but any state that does not have access to vast land will invariably be unable to achieve its objectives of providing social amenities to the citizens. Unfortunately, the customary land tenure system did not guarantee certainty of title and government faced problem in acquiring land for development. Thus, the Land Use Act was enacted to ensure security of customary title and make it easy for the state to acquire land for socio-economic development by vesting land in the Governor of the State.[2]

Communal ownership of land is still characterised by insecurity of title holding because alienation of land is done by the head of the community with the concurrence of principal members of the family or community. It is thus difficult to ascertain the status of the head and principal members in relation to the communal land. The question therefore is, how can security of customary holding be ensured for effective land administration under customary law? The aim of the research is to analyse the application of trust to the administration of customary land in Nigeria and the objective is to proffer answer to the research question.

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[1] I Abdulkarim, 'Trust Law and the Administration of Real Property in Nigeria' *International Journal of Advanced Legal Studies and Good Governance,* (2011) 2 (1)210.

[2] Adefi M.D.Olong, *Land Law in Nigeria*, (Second Edition, Malthouse Press Ltd, 2011)116.

Trust enables an owner of property who enjoys the right of its possession, use, enjoyment, reversion, management and control to exercise these rights through the agency of another person.[3] Thus, the main characteristic of a trust is that property is vested in the trustees not for their own benefits, but for the benefit of the beneficiaries; instead of giving the property directly to the beneficiaries, the donor creates or establishes a trust (a management institution) which will not only manage and safeguard the trust property and apply it in the manner directed, but will also make it productive.[4]

2. The Concept of Trust in Customary Land Law

The concept of family or communal ownership of property is a unique feature of customary land law which means that every member of the community has certain claim, powers, privileges and immunities in or over the land. However, a member of the community or family does not have separate individual title or ownership to the whole or any part of the communal land.[5]Some basic characteristics of family property include: the land belongs to the family as a distinct perpetual legal entity; the members do not possess any separate interests in the property; and no transaction affecting interests in the land is valid unless done by or with the consent of the family head and principal members of the family.[6]

Customary land tenure is a form of land holding indigenous to the ethno-cultural groups in Nigeria, and its principles appear uniform throughout Nigeria.[7]Thus, it is a basic principle of customary land tenure that land belongs to the village or community, and every member is entitled to the use and enjoyment of the natural gifts growing on the land and to the use of a portion of the land for cultivation, building, grazing or hunting,[8] and can also sue with respect to communal land.[9] This is however different from joint tenancy whereby all beneficiaries of the un-partitioned land have only life interest in the land and by virtue of the doctrine of survivorship, the sole survivor becomes the sole owner of the property.[10] Under customary law, land belongs to the community and the chief or family head holds it in trust on behalf of the members (living and yet unborn) of the community.[11] Land was conceived as a sacred institution given by God for the sustenance of all members of the community, and as such it belonged to the dead, the living, and the unborn.

Oshio opined that since the living merely held land as a kind of 'ancestral trust' for the benefit of themselves and generations yet unborn, it was inconceivable for any individual to claim ownership of the land or part of it.[12] In *Amodu Tijjani v Secretary, Southern Nigeria,*[13] Lord Viscount Haldane stated that "…the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual." Thus, land belongs to the village or community whose members have equal rights over the land but the head of the family or the community is responsible for the management and control of the communal land for the benefit of the members. The principle that the head is a representative of community or family with regard to communal or family land is of universal application in Nigeria.[14]In *Amodu Tijjani's case*, the head

[3] Abdulkarim (n 1) 211.
[4] Ibid.
[5] B O Nwabueze, *Nigerian Land Law* (Nwamife Publishers Limited, 1974)53.
[6] A A Kojajo, *Customary Law in Nigeria Through the Cases* (Revised Edition, Spectrum Books Limited, 2000)77.
[7] O Onakoya, 'Family Head Versus Family Members: Legal Issues in Management of Family Land under Yoruba Customary Law', *Journal of Law, Policy and Globalisation,* (2015) 39, 219.
[8] Yakubu, M.G, *Land Law in Nigeria* (Macmillan Publishers Ltd., 1985) 6o.
[9] *Regd. Trustee, CAC v Dada* (2017)2 NWLR pt.1548 at p.61 at p.83, para.E.
[10] *Udok v Udoekong* (2020)12 NWLR (pt 1739) 492, 522-523.
[11] S O Imhanobe, *Legal Drafting and Conveyancing* (Temple Legal Consult, Abuja, Third Edition, 2010) 388-389.
[12] P Ehi Oshio, 'The Indigenous Land Tenure and Nationalisation of Land in Nigeria', *Boston College Third World Law Review Journal*, (1990)10(1) 46.
[13] [1921] 2 AC 399, 404.
[14] T O Elias, Nigerian *Land Law and Custom*. (Third Edition, Routledge & Kegan Paul Ltd, 1962)22.

of family or community has been described as 'trustee' because the family property system is in the nature of trust. It ensured that great attention is paid to the consolidation of the family as an important unit of the society.[15] However, this position has generated divergence of opinions amongst writers on whether a family or community head is a trustee or not. Many opinions have drawn an analogy between the head of the family and the trustee under English law in considering the former's rights and duties. Abdulkarim submitted that control and management of communal land is vested in the chief as trustees of the community hence the relevance of trust law to communal land.[16]

Land under customary law has also been considered as a kind of 'ancestral trust' for the benefit of members of the family or community and generations yet unborn, and it is thus inconceivable for any individual to claim ownership of the land or part thereof to sell it.[17] There are judicial authorities such as *Abioye v Yakubu*[18] where Karibi-Whyte, Jsc observed that the trust concept in land holding in Nigeria is not new, and it is the recognized traditional concept accepted by the courts and applied in all family or community holding. In *Omagbemi v Numa*[19], Webber, J said: "now the *Olu* never owned jekri land as an individual. The land belonged to the community and the *Olu* was trustee. In him as trustee was vested the land." Similarly, in *Ajao v Ikolaba*[20], Ademola, C.J.N. stated that "the concept of land tenure in native law and custom is clear. Land belongs to all members of the community or village where everyone has a right. The head Chief holds all the land in trust for the community or the people."

These decisions of the Court are authoritative because they are primary sources of law,[21] and they represent a judicial approach to many attempts to define the status of family or community head under customary law. They demonstrate that the family or community head is a trustee in relation to the family land, and these cases strengthen the position that trust is well recognized under native law and custom, and that the family village head is a trustee. Usman posited that before the reception of equity into Nigeria, the customary law of various communities had the principle of trust, especially on land.[22] The author argued that it was this customary rule that inspired the position of Viscount Haldane in *Amodu Tijani's case* and similar views that the family or community head holds the land in trust for himself and other family or community members.[23]It has been submitted also that in respect of community land, the Chief is a trustee or administrator.[24] Odubunmi also concurred that the headman (chief) exercises the power of a trustee but he is strictly not a trustee but the courts have continued to describe the head as trustee of the communal land.[25]

3. The Communal head as a Trustee

The position of the head of the community in relation to communal land has been subject of controversy. There are writers who have argued that the head of the family or community is not a trustee. Nwabueze stated that although the head of the family or community is considered to be in the position of a trustee, there is nothing sacrosanct about the idea of trusteeship. The confusion about the head's position by analogy to the trustee will be understood if the differences between the

[15] O Adigun, *Cases and Materials on Equity, Trusts and Administration of Estate* (Ayo Sodimu Publishers Ltd, 1987) 276-277.
[16] Abdulkarim (n1) 219.
[17] EhiOshio (n 12).
[18] (1991) 5 NWLR (pt 190) 130 231-232.
[19] (1923) 5 NLR, 17, 19.
[20] (1973) 5 NLR 17, 69.
[21] Yusuf Aboki, *Introduction to Legal Research Methodology* (Third Edn, Ajiba Printing Production, 2013)16.
[22] Usman, A.K. *Law and Practice of Equity and Trust.* Malthouse Press Limited, 2014)147.
[23] Ibid, p.148.
[24] T O Elias, *Nigerian Land Law.* (Sweet and Maxwell, London, 1971) 78.
[25] O Odubunmi, 'An Examination of the Competing Layers of Rights in Communal and Family Land', *The Gravitas Review of Business and Property Law* (2017) 8 (1)130.

head of community and trustee are ascertained.[26]Perhaps the most fundamental of these differences is that although a trustee of land has the legal title vested in him, and he is therefore the legal owner of it, the legal title to communal land is vested in the community or family and not in the head individually.[27] It thus appears that Nwabueze misunderstood the basis of the position of the community head as trustee. Nwabueze's position can be criticised on the ground that the community is not a corporate entity and thus cannot be vested with the legal interest. To fill this vacuum in the communal ownership, the head of the family or community is considered as a trustee who is vested with the legal title for the benefit of the members of the family or community.

Fabunmi argued that although some attributes of family or communal head are similar in some respect to that of the trustee under the received English law, there is no doubt that they are products of two different systems and cannot be put in the same compartment.[28]It will therefore be unfair to subject customary law to the rules of English law of Trust. Yakubu opined that that the trusteeship position of the family head is not to be confused with a trustee as it is understood under English law.[29]According to Yakubu, the most important difference is that the trustee under English law has a legal title to the subject matter of the trust, while the legal title is vested in the community under customary law.[30] More so, Lloyd posits that although the family head has jurisdiction over all family land, he is not a trustee.[31]

However, there are writers who have taken a middle course, and argued that whatever name is used to describe the family or community head, the trusteeship is in a special sense of the word; it signifies only that he is required to exercise his powers not for his own private advantage but for the benefit of the family.[32] Fekumo thus concluded that the family head can be described as "trustee-beneficiary" of the family land.[33]Perhaps, the preferable position is that of Fekumo which is that the community head is a trustee in a special sense of the word. The relation between the family head and members of the community is such that the family head is expected to administer the land for the benefit of the family members. Although there is a remarkable difference between the trusteeship position of the chief under customary law and trustee under English Law, it can be submitted that such a distinction has no practical relevance in employing trust towards achieving effective administration of communal land.[34]

The essence of trust lies in existence of two interests in a property, and the distinction of the interests by way of the separation of the benefits of enjoyment from the burden of management. An examination of the characteristics of modern trust reveals that the community head falls under the definition of a trustee based on certain considerations. First, a trust can only exist in relation to specific property; secondly, the property must be held by trustees subject to mandatory obligations governing how it should be used and applied; thirdly, the trustees must owe these mandatory obligations to legal persons who are entitled to enforce them.[35] These elements all appear in the definition of 'trust' in the Hague Convention on the Law Applicable to Trusts and their Recognition which was incorporated in the English Law by the Recognition of Trusts Act.[36]

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[26] B O Nwabueze, *Nigerian Land Law* (Nwamife Publishers Limited, 1974)149.
[27] Ibid, 149.
[28]J O Fabunmi, Equity *and Trusts in Nigeria* (Obafemi Awolowo University Limited, Ile-Ife, Second Edition, 2006)199-200.
[29] M G Yakubu, *Land Law in Nigeria* (Macmillan Publishers Ltd.,1985) 61,
[30] Ibid.
[31] P C Lloyd, *Yoruba Land Law (*Oxford University Press Ltd., 1962)83.
[32] F J Fekumo, Principles *of Nigerian Customary Land Law* (F & F Publishers, 2002)177.
[33] Ibid.
[34] Abdulkarim (n1) 219.
[35] R Pearce and Stevens, *The Law of Trusts and Equitable Obligations.* Oxford University Press, 2006) 111.
[36] Article 2 of the Hague Convention on the Law Applicable to Trusts and their Recognition which was incorporated in the English Law by the Recognition of Trusts Act 1987.

It has been argued that the idea underlying trusteeship position of the village head is that community does not have the corporate legal capacity to manage the family or communal land.[37] Therefore, someone who is a member of the community has to manage the land on behalf of the other members. Consequently, it is submitted that the family or community head holds the community land as a trustee and owes certain obligations to the family members. More so, the office of the trustee is not held in perpetuity.[38] It is important to state that the concept of trust under customary law is not a product of the received English law; it is rather a product of the operation of customary law on the ownership of land. Therefore, while trust is regarded as a product of equity, the designation of the family head as a trustee is a product of customary law. Designating the family head as a trustee is probably the only way of ensuring that he performs his role, and he will be liable in the event of breach. The fact that the family head also benefits from the land does not affect his position since a trustee's rights as a beneficiary is not inconsistent with the existence of a trust.[39]

One interesting example of the application of trust in customary land law is obtainable under Benin native law and custom. It is clear from decided cases[40] that land in Benin is not vested in the family but in the *Oba* of *Benin* because the *Oba* is the only authority competent under *Bini* customary law to make allocation or grant of *Bini* lands in or outside Benin City.[41] Before the promulgation of the Land Use Act, title to lands in Benin was vested in the Oba of Benin who was the trustee or legal owner thereof, and holds it on behalf of all the Benin people who were beneficiaries.[42] Therefore, under the Benin native law and custom, land was held on trust for the benefit of the members of the community who could apply and be allotted portion for use. This manifestation of trust in Benin is not distinctly different from the trustee under the English law. In *Chief Omagbeni & ors v Chief Numa,*[43]the plaintiffs who were also Jekri Chiefs, asked for declaration that they, as descendants of the *Olu Akenghuwa*, who was the last ruling chief of his dynasty and known as *Olu Jekri*, are owners of the disputed land in Warri, and entitled to profits arising from such land. It was held that the Jekri land was vested in the *Olu* as trustee for the *Jekri* people and that the position of *Olu* was not a prerogative of the *Akengbuwa* or any other family. Similarly, iIn *Imade v Otabor*[44], it was stated that all lands in Benin are owned by the community for whom the Oba of Benin holds same in trust, and it is only the Oba who can transfer to any individual the ownership of such land.

However, Smith canvassed that the headman or chief in the exercise of his powers of control and management of the land is regarded as a trustee but title to land is not vested in him but in the corporate unit.[45] The head of the community is comparable to a corporation sole which never dies; the inanimate institution remains while the mortal incumbents come and go.[46] Jegede submitted that the concept of trusteeship is well founded in customary land law.[47] For example, ownership of family property under customary law is vested in the family as a unit, but the power of management and control is vested in the head of the family, and he is strictly enjoined to exercise the power for the benefit of himself and other members of the family.[48] Jegede further submitted that the position

[37] M T Ladan, *Introduction to Jurisprudence: Classical and Islamic* (Malthouse Press Ltd, 2006)160.
[38] *EBOSIE v. PHI-EBOSIE* (1976)7 S.C. (119), 127.
[39] Ibid. 112.
[40] *Nwagboe v Evbuomwan* (1959) 4 F.S.C.p.91,p.127; *Arase v. Arase* (1981) 5 S.C.p.58
[41] A A Kojajo, *Customary Law in Nigeria through the Cases* (Revised Edition, Spectrum Books Limited,2000) 128.
[42] I O Smith, *Practical Approach to Law of Real Property in Nigeria* (Ecowatch Publications Nig. Limited, 2013) 90-91.
[43] (1923)5 NLR, 19.
[44] (1998)3 SCNJ 19, 25-26.
[45] Ibid. 64.
[46] Ibid, 64.
[47] M I Jegede, Law *of Trusts, Bankruptcy and Administration of Estate* (MIJ Professional Publishers Ltd, 1999) 13.
[48] Ibid, 13.

that the head of a community holds communal property in trust for himself and other members of the community is not derived from the received English law of trust; it is rather a composite designation of a traditional system of property holding by which system customary law creates unique specie of trust.[49]

However, there is only one ownership of family property under customary law which is vested in the community as a group. Such ownership can only be transferred by the head of the family with the consent of the principal members of the family.[50] In *Onyekuluje v Animashaun*[51], it was held that under Yoruba customary law, the conveyance, sale, or transfer of family land requires the consent of the head of the family to be valid. This restricted power of the head of family under customary law to dispose of family property indicates a very significant distinction between powers of head of a community as trustee of communal land and those of a trustee under the received English law.

Although strictly constrained by the instrument creating a trust, the power of an English trustee to confer good title on the purchaser has never been in doubt, if the exercise of his power does not amount to breach of trust.[52]According to Aboki, in African customary land law jurisprudence, the role of the family head is that of a trustee who holds land for the benefit of his community.[53] Aboki further stated that communal ownership of land is akin to the situation in feudal England where the various lords and barons held land in trust for the king.[54]Thus, the analogy of the family head to the trustee is based on the fiduciary position of the head and his position in relation to other members of the family because he must act in good faith in carrying out his duties.[55] The office of the family or community head is gratuitous, but he is re-imbursed for expenses incurred in managing the property in the same way as a trustee, and like a trustee, if he incurs unnecessary or speculative expenses, he is personally liable.[56]

There are concerns or dissatisfaction with systems of land tenure prevailing in sub-Saharan Africa, and the view is widely held that the traditional institutions which govern land rights operate in a manner obstructive to land development, especially agricultural development.[57]Furthermore, it has been contended that the customary tenure in Northern Nigeria is feudal in nature under which the Fulani *jihadists* claimed over-lordship of the land after the Islamic conquest.[58] However, with regard to the Muslim emirates of Northern Nigeria, the Emirs and other native rulers were never lords and masters of the land; they were merely political, religious and military rulers of their respective emirates.[59]

It is canvassed however that despite the diverse ethnic groups, tribes and customs, the native communities have one common feature of ownership of land which depends on membership of

[49] Ibid.14.
[50] *Ekpendu v.Erika* (1959) 4 FSC, 79; *Babalola v Akinsinde* (2018)17NWLR (pt1649) 577; *Offodile v Offodile* (2019)16 NWLR (pt1698) 189.
[51] (2019) 4 NWLR (pt1662) 242, 258-259, paras.E-A.
[52] Jegede (n 47)14.
[53] Y Aboki, 'The Land Use Act and Foreign Investment in Nigeria" *Contemporary Issues in Nigerian Law,* (Faith Printers International, Zaria, 2005) 14.
[54] S I Orji, 'The Nigerian Land Use Act, 1978 in Historical Perspective'. In SMG Kanam, and A M Madaki, (ed.) *Contemporary Issues in Nigerian Law: Legal Essays in Honour of Hon. Justice Umaru Faruk Abdullahi,CON* (Private Law Department, 2006)490.
[55] R W James, *Modern Land Law of Nigeria* (University of Ife Press, 1973)81-82.
[56] Ibid, 85.
[57] K Bentsi-Enchill, 'Do African Systems of Land Tenure Require Special Technology?' *Journal of African Law,* (1965) 9, 114.
[58] EhiOshio (n 12) 46.
[59] T O Elias, *Nigerian Land Law and Custom*. Routledge & Kegan Paul Ltd, London, 31.

community.[60] However, the power of management and control of the land was vested in the family or community head. In this way, they were regarded as trustees of the people to whom the land belonged. Therefore, they could not give away by treaties any rights in land of a proprietary character.[61] The trustee analogy in relation to the position of the head of the family has been further justified on the premise that:[62]

> *[he] is in charge and control of the family property; he collects the revenue of the family property; he has to make certain disbursements out of the family revenue for family purposes, upkeep of the family property, funeral, marriage and Baptism, ceremonial expenses of the members of the family, education of children…*

This shows the scope of power of control and management which the community head exercises for the benefit of the members of the family. However, the right to alienate it resides in the community as a group acting corporately and not individual members although an owner of land under native law and custom is entitled to transfer his absolute interest in the land to another and grant exclusive possession of same.[63]

4 Alienation of Communal Land

The law is that all members of family cannot alienate family land without the consent of the family head, and any alienation inconsistent with this principle is regarded as void *ab initio*.[64] In *Offodile v Offodile*,[65] the court held that it is an essential customary element that the head of the family must join in the sale of family property together with the principal members of the family for such transactions to be valid. The implication is that an intending purchaser must see that he obtains not only the consent of the majority (not even all members if it were possible) but also that of the head of the Community.[66]

Therefore, where the head of the family alone executes a conveyance of Community land as a grantor, the sale is prima facie voidable and the family can set aside such a sale if the other members acted timeously. This principle only applies where the head of the family executes the conveyance for and on behalf of the family and not where he purports to convey the property in his personal capacity as the beneficial owners thereof. In the latter case, the applicable principle *nemo dat quod non habet*[67]applies as such family head, not being the absolute owner of the land, cannot alienate that which does not belong to him. Consequently, such transactions would be void *ab intio*.[68]However, according to Oluyede, there is no justification for this proposition particularly in view of the changes in customary law as a result of the modern changes because the distinction between the alienation by community head and principal members cannot stand logical reasoning.[69] Oluyede argued that the rule is capable of being interpreted to mean that there can never be sale of family land against the wishes of the family head whether he is alone or not.[70]More so, it seems the community head can make either valid sale or a voidable sale without the necessary authority of the community.[71]

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[60] 'An Introduction to the Problems of Ownership of Land in Northern Nigeria', *The Nigerian Law* 205.
[61] Elias (n24) 31.
[62] D J Bakibinga, *Law of Trusts in Nigeria* (Department of Law, University of Ilorin, 1989)3.
[63] *Kolo v Lawan* (2018)13 NWLR (pt1637) 495,517, paras.B-C.
[64] P A OO Oluyede, *Modern Nigerian Land Law* (Evans Brothers Ltd, 1989)275.
[65] (2019)16 NWLR (pt.1698), 189.
[66] Ibid, 276.
[67] The latin maxim means "No one can give what they do not have".
[68] *Odekilekun v Hassan (*1997)12 SCNJ p.119 at p.127.
[69] Ibid.
[70] Ibid.
[71] Ibid.

The weakness in the rule that family head alone can sell land becomes obvious when the rule is critically considered. For example, despite the fact that a purchaser of family land was not able to identify the head at the time of the sale, it seems that if the sale was done by someone who purports himself to be the family head, the purchasers should be regarded as having acquired the title to the family land.[72] However, where it is established that there was fraudulent misrepresentation, then the conveyance will be liable to be set aside by the family as void on the ground of fraud on the part of the vendor who falsely claimed the authority.[73]The Supreme Court in *Malami v Ohikhuare*[74] held that where an act or anything is void, it is in law a nullity and not only bad, it is incurably bad. Consequently, Oluyede concluded that because of the hardship that the rule is likely to work in actual practice and because of the fact that it is alien to all notion of customary land tenure in Nigeria, it is better to treat the transactions whether head of the family is privy to them or not as merely voidable and not void. Thus, it is argued that in all cases, the sale should be capable of being ratified by the members of the family whether they have been defrauded or not.[75] The difficulty associated with this rule on alienation of family land results to insecurity of title to land held under customary law and this difficulty appears to defy attempts to solve the problem of insecurity of title arising from disputes on multiple transactions relating to community land. This is even so inspite of the enactment of the Land Use Act which was meant to address this perennial problem.

The land Use Act introduced the system of individualisation of land holding by which only an individual can be granted a right of occupancy. This was aimed at addressing the perennial problem of insecurity of title associated with customary land holding. The implication is that a group of individuals cannot be granted right of occupancy under the Land Use Act. However, the Kaduna State Land Use Regulations contains provisions that allow members of a family or community to be issued with Certificate of Occupancy and all their names shall be listed on the Certificate of Occupancy.[76] The implication is that a Certificate of Occupancy over a community will list all the names of members of the community. Thus, this provision is arguably contrary to the objectives of the Land Use Act and tends to promote the communal ownership of land which exists under customary law. More so, the provision has not addressed the problem of insecurity of title posed by the rule of alienation of customary law which provides that alienation can only be effective where it is done by the family head with the consent of principal members. Thus, where there are multiples owners of land listed on a Certificate of occupancy, it is difficult to ascertain the family head from the principal members of the family. This makes system of communal ownership unwieldy and unsuitable for administration of land under customary law and the land Use Act.

Notwithstanding the above, the concept of trust was adopted by Communal Land Rights (Vesting in Trustees) Law of 1958[77] which was an attempt to provide a solution to the problems arising from the exercise of rights in communal land on behalf of a community.[78] By virtue of this law, *Obas* and chiefs could be appointed as trustees to exercise those rights traditionally exercised by the *Obas* and chiefs on behalf of the Community. Any failure by an Oba and chiefs to fulfill the duties imposed on them as trustees constitutes a breach of trust, and legal action can be taken by the Attorney- General to recover any money lost, or to remove them from their trusteeship.[79] This trusteeship model was applied in Oyo, Ogun, Ondo, and Bendel States to Heads or Chiefs of the communities under the Communal Land Rights (Vesting in trustees) Law.[80] In *Esi v. Chief*

[72] Ibid, 277.
[73] Ibid
[74] (2019)7 NWLR (pt1670) 132, 171, paras. F-H.
[75] Ibid.
[76] Rule 10(2) of the Kaduna State Land Use Regulations,2022 made on 31st December,2022
[77] No.46 of 1959 (Western Region)
[78] Lloyd (n 31)361.
[79] Ibid
[80] A A Utuama, *Nigerian Law of Real Property* (Shaneson C.I. Limited, 1989)1.

Secretary[81], the Supreme Court held that by the combined effect of the provisions of the Communal Land Rights (Vesting in Trustees) Law, 1958 and the Warri Division (*Itsekiri* Communal Lands) Trusts Instruments, 1959, all rights previously vested in and exercisable by the *Olu* of Warri in respect of *Itsekiri* Communal Land in Warri Division are now vested in and exercisable by the *Itsekiri* Communal Land Trustees.

However, it is difficult and ironical to expect the traditional or customary land holding system to guarantee title to land when the customary law is largely unwritten. More so, the issue of legal personality of the chiefs acting on behalf of the village or community affects their competence to manage the family or communal land. The law is clear that the only permissible way of proving the legal personality of incorporated Trustees under Part C of Companies and Allied Matters Act is by production of the certificate of incorporation issued by the Corporate Affairs Commission.[82] Therefore, proof of trusteeship of the community head will not be simple because such appointments under customary law are not usually documented. Unfortunately, communities are not corporate entities and evidence of incorporation as corporate entity is necessary to prove otherwise,.

Finally, it can possibly be posited that an alternative approach to overcome the hurdle in applying trust to customary law is to attribute legal personality to the community. This is achieved by treating the community separate from its members. In English law, the inability of the community to own property was overcome by instrument of trust.[83] It is worthy to note that the Nigerian legal system is comprised of local legislation, custom and received English Law. Consequently, the English law ideas of law and justice are administered along with the native law and customs in Nigeria.[84]

5. Conclusion

Communal ownership of land is a unique feature of customary land law which makes it difficult to alienate the community land or part of it. Unfortunately, one of the shortcomings of communal ownership title is lack of security of customary title which encourages multiples transactions over the same land. The Land Use Act was enacted to address the problem of insecurity of customary title in customary land tenure system. However, this noble objective of the Land Use Act is far from being achieved as the problem of insecurity of title has also infiltrated the Customary Right of occupancy. Under Customary law, communal belongs to the community and a part of the land can only be alienated by the head with the consent of the Principal members. Consequently, it is difficult for an individual or government to purchase or acquire a part of the communal land which belongs to entire members of the community.

This article finds that the rule that alienation of land by community head is subject to the concurrence of principal members has caused untold hardship and injustice to innocent purchasers of community land. This is because the rule is not in tune with current socio-economic realities and is no longer suitable to regulate transactions relating to community land. Unfortunately, the rule is the means through which the community can alienate communal land since the community does not have legal personality to alienate land in a corporate capacity. It is therefore, recommended that the rule governing alienation of communal land by the head with concurrence of principal members should be jettisoned, and trustee(s) of the village or community be appointed or constituted in accordance with the provisions of Companies and Allied Matters Act to administer the communal property with power to alienate the communal land or portion of it. Thus, every community or village should be required to register as an association to enable the communal land to be vested in the trustee(s) for the benefit of the community. In this respect, it will be easy for innocent buyers or investors to determine the status of the trustees.

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[81] (1973)11 SC, p.189, pp.216-217.
[82] *Dairo v Regd. Trustees, T.A.D., Lagos* [2018]1 NWLR (1599) 62, 84, (paras. B-C)
[83] Lloyd (n 31) 305.
[84] C S Rhyne, *Law and Judicial Systems of the Nations* (The World Peace Through Law Centre, Washington, 1978) 542.